

Section 3268 is adopted to read:

3268. Use of Force.

The purpose of this Section is to set forth Department of Corrections policy governing the use of force. The policy has its foundation in California Penal Code statutes and relevant case decisions.

(a) Definitions.

(1) Reasonable Force:

The force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

(2) Unnecessary Force:

The use of force when none is required or appropriate.

(3) Excessive Force:

The use of more force than is objectively reasonable to accomplish a lawful purpose.

(4) Non-Deadly Force:

Any use of force that is not likely to result in death.

(5) Deadly Force:

Any use of force that is likely to result in death.

(6) Use of Force Options:

(A) The choices available to an employee when selecting a reasonable force option.

(B) The choices include, but are not necessarily limited to: verbal persuasion or orders; physical strength and holds; chemical agents and/or other immobilization devices; handheld batons; less-lethal weapons or firearms.

(1.) For the purposes of this section, a "less-lethal weapon" includes the 37 mm launcher and any other weapon when used to fire less-lethal projectiles.

(2.) For the purposes of this section, a "firearm" is a weapon used to fire lethal projectiles.

(b) It is the policy of the Department of Corrections to accomplish the custodial and correctional functions with minimal reliance on the use of force. Employees may use reasonable force as required in the performance of their duties, but unnecessary or excessive force shall not be used.

(c) The Department of Corrections recognizes the sanctity of human life. Therefore, deadly force will only be used when it is the

reasonable force, as defined in Section 3268(a)(1), and is needed to:

(1) Defend the employee or other persons from an immediate threat of death or great bodily injury.

(A) For the purposes of this section, "great bodily injury" means an injury that creates a substantial risk of death.

(2) Prevent an escape from custody.

(3) Stop acts such as riots or arson that constitute an immediate jeopardy to institutional security and, because of their magnitude, are likely to result in escapes or the death of other persons.

(4) Dispose of seriously injured or dangerous animals when no other disposition is practical.

(d) A firearm shall not be discharged if there is reason to believe that persons other than the intended target will be injured.

(e) Firearms may be discharged as a warning only in an institutional/facility setting and only when deadly force is permitted under Section 3268(c).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2651, 2652, and 5054 Penal Code; and Section 50 Civil Code; *Whitley v. Albers* (1985) 475 U.S. 312, 106 S.Ct. 1078.

3268.1. Reporting and Investigating the Use of Force.

(a) Reporting Non-Deadly Force.

(1) An employee who uses or observes non-deadly force greater than verbal persuasion to overcome resistance or gain compliance with an order shall document that fact. The document shall identify any witnesses to the incident and describe the circumstances giving rise to the use of force, and the nature and extent of the force used. The employee shall provide the document to his or her immediate supervisor.

(2) The employee's immediate supervisor shall review the document to ensure that it is adequately prepared and to reach a judgment concerning the appropriateness of the force used. The supervisor shall document his or her conclusions and forward them with the employee's document through the designated chain of command, to the institutional head for approval or follow-up action.

(b) Reporting Deadly Force.

(1) An employee who uses deadly force, whether on or off duty, shall ensure that a supervisory employee is notified of the incident without delay.

(2) The supervisor shall ensure that the chain of command is notified and all necessary health and safety, medical and security measures are initiated. If the incident is in an institution/facility, the supervisor shall go to the location and ensure that the scene is protected.

(3) The Assistant Director, Office of Internal Affairs, or designee shall designate an employee to be in charge of the investigation. The employee shall go to and take charge of the scene. The employee shall assemble the appropriate investigative staff and ensure that all necessary investigative procedures and coordination with affected law enforcement entities are accomplished. The product of the investigation will be a report to the Director with conclusions concerning the extent to which the use of force did or did not comply with the law. However, when the deadly force is used in the community, local law enforcement shall take charge of the scene.

(4) A Deadly Force Review Board (DFRB) shall be convened as soon as possible after the investigation is completed.

(A) The Director or designee shall designate the members of the DFRB.

(B) The DFRB shall be composed of at least four members. Three shall be non-departmental law enforcement professionals. One shall be either a Regional Administrator or a Regional Parole Administrator outside the region or jurisdiction where the deadly force was used. Additional members may be designated by the Director or designee.

(C) The DFRB shall examine all aspects of the incident to determine the extent to which the use of force complied with departmental policies and procedures, and to determine the need for policy, training and/or equipment modifications. The DFRB shall report its findings, in writing, to the Director for approval or follow-up action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2651, 2652, and 5054 Penal Code; and Section 50 Civil Code.

3268.2 is a renumbering of existing section 3280, amended to read:

3268.2. Use of Restraints.

(a) Mechanical means of physical restraint may be used only under the following circumstances:

(1) When transporting a person between locations.

(2) When a person's history, present behavior, apparent emotional state, or other conditions present a reasonable likelihood that he or she may become violent or attempt to escape.

(3) When directed by medical staff, to prevent a person from attempting suicide or inflicting injury to himself or herself.

(b) Mechanical restraints shall not be:

(1) Used as punishment.

(2) Placed around a person's neck.

(3) Applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing, e.g., hog-tying.

(4) Used to secure a person to a fixed object, except as a temporary emergency measure. However, a person who is being transported shall not be locked in any manner to any part of the transporting vehicle.

(c) When mechanical restraint is required, handcuffs, alone or attached to a waist chain, will be the means of restraint normally used. However, additional mechanical restraint, including leg irons, additional chains, straight jackets, leather cuffs, or other specialized restraint equipment may be used when the circumstances indicate the need for the level of control that such devices will provide.

(d) Use of restraint equipment by direction of medical staff shall be fully documented in the institution medical file of the restrained inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2650, 2651, 2652, 2652.5 and 5054 Penal Code.

Amend Existing Section 3276 to read:

3276. Firearms.

(a) Only peace officers who have satisfactorily completed firearms training and who are currently qualified in the firing of departmental firearms shall be assigned to armed posts or otherwise be authorized to possess, carry or use a

departmental firearm. Exceptions are only authorized in extreme emergencies when peace officers are not available in sufficient numbers or in time to stop or control a situation which warrants the immediate use of force, as described in section 3268.

(b) An employee appointed to a peace officer position wherein the specifications of the position include the carrying and use of firearms shall be given a reasonable time to complete firearms training and to qualify in the firing of departmental firearms. Persistent failure or refusal to satisfactorily complete firearms training and to qualify in the firing of departmental firearms shall be cause for dismissal from employment as a peace officer.

(c) Employees shall not have accessible, carry or use privately owned firearms or ammunition while on duty. For the purpose of this section "on duty" means any time which is compensable as actual time worked.

(d) Employees who are ordered to carry a concealable firearm while on duty away from facilities where inmates/parolees are located shall keep the firearm concealed at all times except when use of the firearm is necessary. Employees on duty on the grounds of, and in, facilities where inmates/parolees are located shall not carry a concealed firearm unless ordered to do so by the official in charge.

(e) Each facility where inmates/parolees are located which maintains an unissued supply of firearms, ammunition, and other weaponry as described in Section 3275, shall provide for its long-term storage in a physically secure armory. Armories shall be located so as to be under 24-hour-a-day coverage of an armed post and away from areas that are open to traffic by unsupervised inmates/parolees and the public. At camps or other locations where these armory requirements cannot be met, arrangements shall be made for the long-term storage of such equipment off the grounds.

(f) Each facility where inmates/parolees are located shall provide a physically secure locked container, located outside the security areas, for the temporary storage of firearms, ammunition and other weaponry of employees and officials who must come on the grounds or enter the facility in the course of their employment or official business.

(g) Employees and others who live on the grounds of facilities where inmates/parolees are located, and any guests or visitors of such persons, shall not bring to, maintain, store or keep any

firearms or ammunition in such residences at any time. Arrangements shall be made for the use of storage facilities described in subsections (e) and (f).

(h) Firearms and ammunition shall not be left in an unattended vehicle at any time upon the grounds of facilities where inmates/parolees are located. Exceptions are authorized only when the vehicle is securely locked and under the direct observation of staff who are aware that the vehicle contains firearms or ammunition, or when the vehicle is equipped with a departmentally approved secure container for such equipment. Merely out of sight storage such as in the spare tire well, trunk or glove box does not meet the requirements for a secure container.

(i) The loss or theft of a departmentally issued firearm or related equipment shall be immediately reported to the responsible employee's supervisor, and through the supervisor to the administrator of the jurisdiction of employment, and/or to the attention of the administrator in which the loss or theft occurred, if in a different jurisdiction. Local law enforcement agencies shall be notified, and a written report shall be made to the deputy director/assistant director within whose jurisdiction the loss or theft occurred.

NOTE: Authority cited: Section 5058, Penal Code.
Reference: Sections 830, 830.5, 832, 4574, and 5054, Penal Code.

Repeal Section 3277.

Repeal section 3279.

Existing section 3280 has been renumbered as 3268.2, and amended, see text above at 3268.2.

Repeal section 3281.